

FILED

2011 MAY 24 P 12:21

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY BLUITT,

Petitioner,

vs.

MICHAEL MARTEL, Warden,

Respondent.

No. C 09-3994 JW (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner incarcerated at Mule Creek State Prison in Ione, California, has filed a pro se amended petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a criminal judgment from Alameda County superior court. Doc. #22.

BACKGROUND

According to the amended petition, petitioner was convicted of two counts of lewd acts on a child and one count of continuous sexual abuse of a minor and was sentenced to eighteen years in state prison. Doc. #22 at 2. Petitioner filed for habeas relief in the state courts, with the California Supreme Court denying relief on

1 March 30, 2011. Doc. #19 at 24. Petitioner filed the instant federal amended habeas
2 petition on May 3, 2011. Doc. #22.

4 DISCUSSION

5 A. Standard of Review

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that
8 he is in custody in violation of the Constitution or laws or treaties of the United
9 States.” 28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the
10 respondent to show cause why the writ should not be granted, unless it appears from
11 the application that the applicant or person detained is not entitled thereto.” Id. §
12 2243.

13 B. Legal Claims

14 Petitioner raises the following grounds for federal habeas relief: (1) the trial
15 court erred in excusing three African American jurors for cause; (2) the trial court
16 erred in instructing the jury; (2) the trial court erred in admitting certain evidence;
17 (3) the prosecutor failed to disclose favorable evidence; (4) there was insufficient
18 evidence to support the convictions; (5) trial counsel had a conflict of interest in
19 representing petitioner (6) trial counsel was ineffective; (7) petitioner’s trial suffered
20 from cumulative error that warrants relief; and (8) appellate counsel was ineffective.
21 Doc. #22 at 6–18. Liberally construed, these claims are sufficient to merit an answer
22 from respondent.

24 CONCLUSION

25 For the foregoing reasons and for good cause shown,

- 26 1. The clerk shall serve by certified mail a copy of this order and the
27 amended petition and all attachments thereto (Doc. #22) on respondent and
28

1 respondent's attorney, the Attorney General of the State of California. The clerk
2 also shall serve a copy of this order on petitioner.

3 2. Respondent shall file with the court and serve on petitioner, within
4 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
5 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
6 habeas corpus should not be issued. Respondent shall file with the answer and serve
7 on petitioner a copy of all portions of the state trial record that have been transcribed
8 previously and that are relevant to a determination of the issues presented by the
9 amended petition.

10 If petitioner wishes to respond to the answer, he shall do so by filing a
11 traverse with the court and serving it on respondent within **thirty (30) days** of his
12 receipt of the answer.

13 3. In lieu of an answer, respondent may file a motion to dismiss on
14 procedural grounds as set forth in the Advisory Committee Notes to Rule 4 of the
15 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner
16 shall file with the court and serve on respondent an opposition or statement of non-
17 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file
18 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of
19 any opposition.

20 //

21 //

22 //

23 //

24 //

25 //


26 //

27 //

IT IS SO ORDERED.

DATED:

May 17, 2011


JAMES WARE
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GREGORY BLUITT,
Plaintiff,

Case Number: CV09-03994 JW

CERTIFICATE OF SERVICE

v.

MICHAEL MARTEL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 24, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gregory P. Bluit V-65548
MCSP
B Gym 128L
P.O. Box 409040
Ione, CA 95640

Dated: May 24, 2011

Richard W. Wieking, Clerk
By: Frank Justiliano, Deputy Clerk